

REBUTTAL TESTIMONY

OF

ROBERT F. KOCH

RATES DEPARTMENT

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

ICC ON ITS OWN MOTION

INVESTIGATION CONCERNING ILLINOIS BELL TELEPHONE COMPANY'S
COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT
OF 1996

DOCKET NO. 01-0662 (PHASE 1)

May 20, 2002

1 **I. Introduction**

2

3 **Q. Please state your name and business address.**

4

5 A. My name is Robert F. Koch and my business address is 527 East Capitol
6 Avenue, Springfield, Illinois 62701.

7

8 **Q. Are you the same Robert Koch who filed Direct and Rebuttal**
9 **Testimony in this proceeding?**

10

11 A. Yes.

12

13 **Q. Please describe the purpose of your Rebuttal Testimony.**

14

15 A. I had previously filed rebuttal testimony addressing intervenors direct
16 testimony in ICC Staff Exhibit 15.0. In this round of rebuttal testimony I
17 will address the rebuttal testimony of Ameritech Illinois (“Ameritech” or
18 AI”) witnesses as they pertain to rates issues relevant to competitive
19 checklist items 2, 4, 7, and 10. Specifically, Section II addresses the
20 nonrecurring charges at issue in Docket 98-0396; Section III addresses
21 unbundled local switching and shared transport; Section IV addresses
22 UNE rates for the high frequency portion on the loop (HFPL) and UNE-P

rates for next generation digital loop carrier (NGDLC); Section V addresses dark fiber, sub-loops, and CNAM UNE rates; Section VI addresses Ameritech Illinois witness Rhonda Johnson's criticisms of the recommendations I made in my direct testimony.

Q. Please summarize your findings and recommendations.

A. I have developed several recommendations and conclusions in this round of testimony. First, although there are final orders for Docket 98-0396 and Docket 00-0393, compliance filings for both of these dockets were filed on May 10, 2002 and Staff has not had time to sufficiently review them for the purpose of compliance with Section 271 requirements. Second, I do not find persuasive the arguments concerning unbundled local switching put forth by Ameritech witnesses in their rebuttal testimony. My position remains that, until such time as there are Commission approved rates for these services, these elements fail to meet the Section 271 requirements under checklist item 2. Third, I do not find persuasive Ameritech witnesses' arguments concerning dark fiber, sub-loops and CNAM rates. In fact, I recommend that the Commission open an investigation into these rates at the conclusion of the current phase of this proceeding. Fourth, I find Ameritech witnesses' arguments concerning the recommendations made in my direct testimony to be largely unpersuasive. I offer a

45 modification to two of these recommendations to satisfy the concerns that
46 I consider to be reasonable.

47 **II. Nonrecurring Charges in Docket 98-0396**

48

49 **Q. Ms. Smith states that you characterize line connection charges as**
50 **interim in nature.¹ Is this an accurate characterization?**

51

52 **A.** No. In my direct testimony, see Staff Ex. 6.0 at line 552, I indicated that
53 the line connection charge, amongst other nonrecurring rates must be
54 considered not yet approved by the Commission. As not yet approved
55 rates, these UNE rates are distinctly different from interim rates. Under
56 most circumstances, interim rates that are approved by the Commission
57 are sufficient to satisfy Section 271. In contrast, not yet approved rates
58 cannot meet the requirements under Sec. 271, since they are either under
59 investigation or are yet to be investigated for compliance with the
60 appropriate pricing rules.²

61

62 **Q. In your direct testimony you identified concerns regarding**
63 **transparency and applicability of UNE non-recurring charges as well**
64 **as the level of non-recurring charges for UNEs and UNE**
65 **combinations that were raised in Docket 98-0396.³ Have any of these**
66 **concerns been alleviated since the filing of your direct testimony?**

67

¹ Ameritech Ex. 10.1 at 5.

68 A. Not entirely. On April 30, 2002, the Commission entered its Order on
69 Reopening in Docket 98-0396. In compliance with this Order, Ameritech
70 Illinois filed interim tariffs on May 10, 2002. Since this rebuttal testimony is
71 being filed 10 days after Ameritech Illinois' tariff filing was submitted, Staff
72 will not have the opportunity to thoroughly review and determine whether
73 this tariff filing complies with the requirements of the Order on Reopening.
74 As such, I cannot responsibly offer an opinion on this issue at this time.
75 Therefore, I am compelled to reserve the right to alter my testimony
76 regarding the impact of this filing on Section 271 approval (specifically its
77 impact on checklist item 2) in the future.

² ICC Staff Ex. 16.0 at 4-5.

³ ICC Staff Ex. 6.0 at 22-28.

III. Unbundled Local Switching and Shared Transport (ULS-ST)

Q. Did Ms. Smith adequately address your concerns regarding ULS-ST?

A. No. I list several concerns regarding ULS-ST in my direct testimony.⁴ Ms. Smith indicated that a Proposed Order, exceptions, and replies to exceptions have been filed in Docket 00-0700 that addresses my stated concerns regarding ULS-ST rates.⁵ As such, she concludes that she does not expect these rates to be an issue in the future.⁶ I do not agree with her assessment. Although it is helpful to know the status of this proceeding, until a tariff is filed with Commission approved rates, my concerns are still valid, since the Commission has not issued its Final Order in the proceeding, and Ameritech has not filed tariffs in compliance with that Order. Simply put, until Ameritech has filed tariffs containing TELRIC compliant rates with this Commission, this item fails to meet the Section 271 requirements under checklist item 2.

⁴ Id. At 28-30.

⁵ Ameritech Ex. 10.1 at 6.

⁶ Id.

**IV. High Frequency Portion of the Loop (HFPL) and Next
Generation Digital Loop Carrier (NGDLC) UNE-P**

**Q. Ms. Smith indicated that interim rates for the NGDLC UNE-P were to
be filed on May 10, 2002, establishing rates that are acceptable for
Section 271 purposes.⁷ Please comment.**

A. These interim rates were filed by Ameritech Illinois on May 10, 2002,
which is, coincidentally, the same date as the Company's Docket 98-0396
compliance filing. As such, my position concerning the adequacy of this
interim tariff mirrors that of the tariff filed pursuant to the Order on
Reopening in Docket 98-0396; specifically, I have not had sufficient time
to carefully scrutinize the compliance tariff in question. Therefore, I cannot
yet say affirmatively that this tariff filing is in compliance with the
Commission's Order on Rehearing and Order on Second Rehearing in
Docket 00-0393. Again, I reserve the right to alter my testimony regarding
the impact of this filing on checklist item 2 in the future.

**Q. Ms. Smith indicated that your position concerning OSS modification
is confusing.⁸ Please comment.**

⁷ Id. At 7.

⁸ Id. at 8.

113 A. Ms. Smith's confusion with my testimony arises from two scrivener's errors
114 in my direct testimony - one at page 16 and the other at pages 30 and 31.
115 The error on page 16 is that the sentence beginning on line 359 and
116 extending through line 361 should not have been included in my direct
117 testimony. The other error is that the last two sentences of the paragraph
118 that starts on page 30, line 637 should also not have been included in my
119 direct testimony. These errors were both entered in to my testimony in the
120 peer-revision process by another Staff member, and I accepted these
121 suggested edits inadvertently. It was never my intention to put forth the
122 position stated in these sentences and I now request that each of the
123 three sentences be stricken. Attached to this rebuttal testimony is my
124 revised testimony with the appropriate sentences in redline and strike-
125 through format.

126

127 **Q. Do these changes to your direct testimony impact your opinion**
128 **concerning Section 271 checklist compliance for OSS modification?**

129 A. No. OSS modification falls under checklist item 4. The modifications to
130 my direct testimony only clarify that these rates are not sufficient to satisfy
131 checklist item 4.

V. Dark Fiber, Sub-Loops, and CNAM

A. Ameritech's assertions regarding the need for an investigation into these rates are unfounded

Q. Ms. Smith indicates that, since the Commission has not yet initiated a proceeding, rates for dark fiber and sub-loops should be considered adequate for purposes of this proceeding.⁹ Please comment.

A. Ms. Smith seems to imply that silence indicates approval, and therefore, compliance. It is true that the Commission has not yet investigated these rates. It has been the practice of the Commission in the past to not initiate a UNE proceeding until a Staff Report has been submitted that requests the opening of an investigation. No Staff Report has been presented to the Commission to investigate the current dark fiber, sub-loop, or CNAM rates. However, as I indicated in my direct testimony, it is my opinion that an investigation must occur before these services are deemed to be TELRIC compliant.¹⁰

Q. Ameritech Illinois witnesses Scott Alexander and Rhonda Johnson both indicate that it is reasonable to not investigate these elements because there has been very little demand.¹¹ Please comment.

⁹ Id at 12.

¹⁰ ICC Staff Exhibit 6.0 at 31.

¹¹ Ameritech Exhibit 15.0 at 25; Ameritech Exhibit 1.1 at 52-53.

154 A. I agree with these witnesses that there has been very little demand for
155 services. However, I disagree that this lack of demand necessarily
156 indicates a lack of interest in the products. As is discussed below, the
157 FCC required ILECs to offer these UNEs because they are an essential
158 building block for facilities based competition. Lack of demand only
159 indicates that these services are not yet part of a viable facilities strategy
160 for competitors at this time. For our purposes, the question of why these
161 elements are not currently demanded necessitates an analysis of whether
162 the current pricing structure is to blame. It is a basic economic principle
163 that, for a normal good, the quantity demanded increases as the price
164 decreases. The current lack of demand indicates that the pricing for these
165 services has not yet hit the threshold level for the first unit. Evidence
166 presented later in this testimony demonstrates that the rates for these
167 services are in fact excessive and not TELRIC based.

168

169 **Q. Please respond to Ameritech witness Smith's assertions that these**
170 **services are not "core" UNEs.¹²**

171 A. Ms. Smith makes this statement as support for her claim that I am
172 overstating the "size and seriousness of the problem" in reference to
173 elements that have not been investigated by the Commission.¹³ She
174 implies that dark fiber, sub-loops, and CNAM queries are not significant
175 from the standpoint of competitive entry into the market. I dispute this

¹² Ameritech Exhibit 10.1 at 4.

assertion, as the FCC has found that these elements were necessary to enable CLECs to build facilities in areas that otherwise could not be entered in a cost effective manner. The UNE Remand Order states the following:

Goals of the Act. Access to unbundled subloop elements allows competitive LECs to self-provision part of the loop, and thus, over time, to deploy their own loop facilities, and eventually to develop competitive loops. If requesting carriers can reduce their reliance on the incumbent by interconnecting their own facilities closer to the customer, their ability to provide service using their own facilities will be greatly enhanced, thereby furthering the goal of the 1996 Act to promote facilities-based competition. Failure to unbundle the subloop would cause residential and small business consumers to wait unnecessarily for competitive alternatives. We also find that the availability of unbundled subloops will accelerate the development of alternative networks, because it will allow requesting carriers efficiently to connect their facilities with the incumbent's loop plant. Thus, our decision to unbundle subloops is consistent with the 1996 Act's goals of rapid introduction of competition and the promotion of facilities-based entry.¹⁴

B. Concerns Regarding Current Rates in Illinois

Q. What concerns do you have regarding the rates for these elements?

A. I have four significant concerns regarding these network elements:

1. There are discrepancies between these sub-loop rates and existing UNE rates for loops.

Sub-loop recurring charges can be compared to "entire" loop rates found in Ameritech Ill. C.C. No. 20, Part 19, Section 2, 2nd Revised

¹³ Id.

¹⁴ *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of 199 Implementation of the Local Competition Provisions of the 2000 Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999)(hereafter "UNE Remand Order") at paragraph 219.

Sheet No. 31. There are several instances where Ameritech proposes that the unbundled sub-loop rate should be higher than the rate for the entire loop of which it is a part. For example, a 2-wire sub-loop, consisting of the portion of the loop between the central office and the remote terminal, has a UNE rate of \$16.51 in Access Area C. In comparison, the basic 2-wire loop in Access Area C has a UNE rate of \$11.40. More examples of this anomaly are contained in tables provided later in this section. This result is completely counter to the logical presumption that a portion of a loop ought to cost less than the entire loop. One would further expect the sum of the parts to be approximately equal to the whole. If not, whatever small differences exist should be easily explainable. Ameritech's rates for these services do not even come close to doing so, and are therefore suspect.

2. There are major discrepancies between the line conditioning charges set for sub-loops as compared to loops in Ameritech's tariffs.

This is in part due to the fact that the respective costs for line conditioning of loops and sub-loops were determined in separate proceedings. Rates for sub-loop conditioning were set in Docket 99-0593, and are based on a Texas arbitration award. These rates can be found in Ameritech III. C.C. No. 20, Part 19, Section 16,

Original Sheet No. 16. Rates for loop conditioning charges for loops were set in Docket 00-0393, and can be found in Ameritech Ill. C.C. No. 20, Part 19, Section 2, 2nd Revised Sheet No. 34. Upon filing the permanent rates for loop conditioning, Ameritech, for reasons best known to itself, did not revise its sub-loop conditioning rates. The following table provides the conditioning charges for loops and sub-loops:

	For Facilities >12 kft and <17.5 kft		For Facilities >17.5 kft	
	Sub-Loop Conditioning	Loop Conditioning	Sub-Loop Conditioning	Loop Conditioning
Removal of Bridged Tap - Initial	\$ 17.62	\$ 14.00	\$ 24.46	\$ 14.00
Removal of Bridged Tap - Each Additional	\$ 14.79	\$ 14.00	\$ 18.81	\$ 14.00
Removal of Repeater - Initial	\$ 10.82	\$ 21.49	\$ 16.25	\$ 21.49
Removal of Repeater - Each Additional	\$ 9.41	\$ 21.49	\$ 13.42	\$ 21.49
Removal of Load Coil - Initial	\$ 25.66	\$ 14.08	\$ 40.55	\$ 14.08
Removal of Load Coil - Each Additional	\$ 22.83	\$ 14.08	\$ 34.89	\$ 14.08

This table shows that rates for removal of bridged taps and load coils are significantly higher for sub-loops than for loops, while the rates for removal of repeaters are significantly higher for loops than

for sub-loops. In my opinion, these three activities should have identical pricing structures, regardless of whether they are performed on loops or sub-loops. Since the loop conditioning charges are TELRIC compliant (as they were filed in compliance with the Order in Docket 00-0393, dated March 14, 2001), it therefore appears highly unlikely that the much higher sub-loop conditioning charges are TELRIC compliant.

3. Concerns regarding underlying cost model.

The underlying cost model used in the development of these studies, the Loop Facility Analysis Model ("LFAM"), has serious deficiencies. The May 22, 2001, HEPO in Dockets 98-0252/98-0335/00-0764 (Consol.) identified several deficiencies of the LFAM model, and based its rejection of Ameritech's rate rebalancing proposal on those deficiencies. Ameritech subsequently withdrew its rate rebalancing proposal in its exceptions to the HEPO. Since the Commission did not rule on the acceptability of LFAM in Dockets 98-0252/0335/00-0764 (Consol.), I believe that the impact of the deficiencies in LFAM as they relate to the UNE rate development in this proceeding must be explored.

4. Ameritech's Illinois rates compare *unfavorably* with its rates in Michigan

It is difficult to compare rates for UNEs across states. Demographic, cost, and regulatory environments that affect these rates vary considerably from state to state. The FCC acknowledged this reality when it set TELRIC guidelines for UNEs yet left it to the state public utility commissions to establish rates. However, given the similarities in rate structures in Ameritech's Illinois and Michigan territories, the rates in the two states lend themselves to comparison. Schedule 23.01 to this rebuttal testimony is such a comparison, and shows that Illinois rates for dark fiber, sub-loops, and CNAM queries are consistently higher than their counterparts in Michigan. Of the 92 comparable rates, 67 (73%) of them are higher in Illinois.

C. Ameritech's "Zone of Reasonableness" Analysis is Inadequate and Misleading

Q. Please describe Ameritech's "zone of reasonableness" analysis.

A. Ameritech's zone of reasonableness analysis is basically a comparison of Ameritech Illinois and Ameritech Michigan rates for dark fiber, CNAM, and sub-loops, and is contained in Schedule SJA-2 to Mr. Alexander's rebuttal testimony.¹⁵ Ms. Johnson contends that this analysis is sufficient evidence to conclude that the Illinois rates are adequately TELRIC

based.¹⁶ However, neither Ms. Johnson, nor Mr. Alexander, elaborates on what information in the schedule leads to this conclusion.

Q. Are you persuaded by Ameritech's analysis?

A. I am not. This analysis is very misleading. First, many rates for services are excluded in this analysis. Specifically, sub-loop rates are represented as a range of rates, rather than an enumerated list that can be compared side-by-side. Further, several Ameritech Illinois rates that are germane to this analysis, but that compare unfavorably to Ameritech Michigan rates, are omitted. In doing so, Ameritech conceals much of the disparity in rates. Schedule 23.01 to this rebuttal testimony is a comprehensive comparison of these rates, and is a more accurate analysis. As I mentioned previously, rates for 73% of dark fiber, sub-loop and CNAM UNEs are higher in Illinois than in Michigan. This hardly represents "reasonableness", but rather demonstrates that the Commission should give this issue very careful scrutiny.

Second, Ameritech's analysis completely ignores the discrepancy between loops and sub-loops that exists in Illinois. The reasonableness of sub-loop rates necessarily includes a comparison with loop rates. As I noted previously in this section, sub-loops that are more costly than loops simply

¹⁵ This exhibit was originally filed as Ameritech Exhibit 1.1, Schedule SJA-3. When Mr. Alexander revised his rebuttal testimony on April 29, 2002, this schedule was renumbered to Schedule SJA-2.

¹⁶ Ameritech Exhibit 15.0 at 25.

defy logic. An analysis of sub-loops versus loops between these states may reveal if the discrepancies found previously in this section are of concern or are merely a quirky pricing reality for these services.

Q. Have you performed an analysis of sub-loops as compared to loops?

A. Yes. My analysis consists of comparing Ameritech's tariffed sub-loop rates as a percentage of Ameritech's tariffed loop rates in Illinois and Michigan. By doing so, this analysis reveals not only that Illinois rates are profoundly illogical as compared to their Michigan counterparts, but will also show the relative margin by which sub-loops offer savings for CLEC customers between the states. The following tables show the results of this analysis for analog 2-wire and 4-wire sub-loops:

2-Wire Sub-Loop Comparison
(expressed as a percentage of loop rates)

UNE		Illinois	Michigan
MDF or CO to SAI/FD	Access Area A	142.86%	67.53%
	Access Area B	98.73%	71.36%
	Access Area C	68.68%	48.33%
SAI/FDI to Demarcation Point	Access Area A	118.92%	64.46%
	Access Area B	104.81%	74.00%
	Access Area C	99.65%	59.49%

Source for rates: Ameritech Illinois Response to Staff Data Request RFK 2.02

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4-Wire Sub-Loop Comparison
(expressed as a percentage of loop rates)

UNE		Illinois	Michigan
MDF or CO to SAI/FD	Access Area A	188.73%	78.33%
	Access Area B	102.14%	84.71%
	Access Area C	70.78%	58.36%
SAI/FDI to Demarcation Point	Access Area A	153.19%	51.50%
	Access Area B	88.23%	54.22%
	Access Area C	85.24%	42.95%

Source for rates: Ameritech Illinois Response to Staff Data Request RFK 2.02

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Q. Is there any additional evidence to suggest that CNAM rates in Illinois are excessive?

331 A. Yes. The direct testimony of RCN witness Rahul Dedhiya shows that
332 CNAM rates are significantly lower in other states than in Illinois. Mr.
333 Dedhiya observed that CNAM rates are considerably less in the following
334 states: in New York (1/100th of the Illinois rate), Maryland (1/15th of the
335 Illinois rate), and Massachusetts (1/7th of the Illinois rate).¹⁷ This supports
336 my concerns regarding this UNE rate.

337 ***D. Recommendations***

338

339 **Q. Do you have any recommendations based on these findings?**

340 A. Yes. An analysis of Ameritech Illinois dark fiber, sub-loop and CNAM
341 rates indicates to me that an investigation into rates is necessary. The
342 fact that demand for these services are negligible only supports this claim.
343 Timing concerns with this Section 271 only hastens this need. As such, I
344 recommend that the Commission order the opening of an investigation in
345 this proceeding to accomplish the following:

346 (1) Determine whether Ameritech's rates for Unbundled Sub-
347 Loops, Dark Fiber, Access to the AIN Database, and Access to
348 CNAM Database are in compliance with TELRIC principles and
349 consistent with the Order in Docket 96-0486/0539 (Consolidated);
350 and

351 (2) Investigate the impact of the LFAM model on the costs and
352 rates for the services in these filings, and determine whether LFAM
353 is acceptable to develop TELRIC costs. As I indicated in direct

¹⁷ RCN Exhibit 2.0 at 3.

354 testimony, Ameritech is already planning to deploy a replacement
355 model for LFAM. As such, the propriety of whatever model
356 Ameritech chooses to support these rates should be a part of the
357 investigation.

358 I note that such an investigation need not be accomplished within this
359 proceeding.

360

361 **Q. What impact do these findings have on Section 271 checklist items?**

362 A. This section of my rebuttal testimony indicates that dark fiber and sub-loop
363 rates are currently not TELRIC compliant. As a result, checklist item 2 is
364 not satisfied. The evidence in this rebuttal testimony furthers my
365 contention that UNE rates for CNAM queries are suspect, and need to be
366 investigated for TELRIC compliance. As such, checklist item 10 is not
367 satisfied.

368

369 **Q. Do these recommendations replace the recommendations in your**
370 **direct testimony?**

371 A. No, these recommendations are in addition to the recommendations in my
372 direct testimony. None of my previous recommendations have changed.

**VI. Concerns Regarding my Recommendations in Direct
Testimony**

**Q. Please summarize the recommendations made in your direct
testimony.**

A. I recommended that Ameritech Illinois agree to the following
recommendations as a way to ameliorate Staff's concerns regarding UNE
pricing issues:

1. That Ameritech Illinois allow all current proceedings concerning
UNE rates to become effective, and agree to relinquish its right to
apply for rehearing in these cases.
2. That AI shall file TELRIC compliant rates or demonstrate that the
interim rates for UNEs subject to the proceedings listed in
recommendation (1) above.
3. That Ameritech Illinois shall agree to cap existing Commission
approved UNE rates.
4. That Ameritech Illinois shall agree to not introduce new or modified
cost models for the development of UNE rates, for new or existing
elements, until it receives prior approval from the Commission.

395

396 **Q. Do Ameritech witnesses take exception to these recommendations?**

397 A. Yes. Ameritech Illinois witness Johnson takes exception to
398 recommendations one, three, and four listed above; Ameritech Illinois
399 witness Smith takes exception to recommendation four.¹⁸

400

401 **A. Recommendation One**

402

403 **Q. Please describe Ms. Johnson's criticisms regarding recommendation**
404 **one.**

405 A. Ms. Johnson argues that the FCC does not require Section 271 applicants
406 to relinquish legal rights, and that my opinion that there is a need for
407 continuity does not justify such an action. Further, Ms. Johnson deems it
408 inappropriate for Staff to ask that the Commission's Section 271
409 recommendation be contingent on Ameritech agreeing to not challenge
410 Commission decisions through the courts.

411

412 **Q. What is your response to Ms. Johnson's criticism?**

413 A. I am offering this recommendation as a potential solution to a
414 problem that is well documented in my direct testimony. It is my
415 understanding that the Commission lacks authority to order Ameritech to
416 implement the recommendations that I have made. Therefore, I did not
417 recommend that the Commission order Ameritech to do this, but rather

offer at as a measure that would, if implemented by the Company, give the Commission confidence that the long-standing problem of rate uncertainty in Illinois would finally be satisfactorily resolved. My request is only that the Company agree to *maintain* those rates that the Commission has found to be TELRIC-compliant, so that the Commission can be assured that its Section 271 approval is based on a stable set of facts, rates and tariffs.

B. Recommendation Two

Q. Did any witnesses criticize recommendation two of your direct testimony?

A. No.

Q. Are there any changes you would like to make to this recommendation?

A. Yes. I have found that there is a grammatical error in this recommendation. As it stands currently, this recommendation does not make logical sense. The intent of this recommendation was to merely get agreement from Ameritech to file tariffs in compliance with ongoing proceedings. As such, I revise this recommendation. The

¹⁸ Ameritech Exhibit 15.0 at 29-32, Exhibit 10.1 at 14-15.

recommendation is as follows, and is in redline/strikethrough format to indicate changes that will be made in my revised direct testimony:

That AI ~~shall~~ agree to file TELRIC compliant rates in compliance with ~~or demonstrate that the interim rates for UNEs subject to the~~ proceedings ~~listed~~ referred to in recommendation (1) above.

C. Recommendation Three

Q. Please describe Ms. Johnson's criticisms regarding recommendation three.

A. Ms. Johnson argues that my recommendation would allow CLECs be completely insulated against cost and rate updates in perpetuity.¹⁹ Upon further review, I agree with Ms. Johnson that my proposal did not indicate an expiration date for such a cap. I also agree that a cap that extends into perpetuity is harmful in the long run. I therefore modify my proposal, so that it sunsets in an appropriate time frame. I believe that a five-year cap would give a sufficient level of continuity to CLECs. I note that in a declining cost industry, such as telecommunications, a cap on rates seems unlikely to result, as a practical matter, in any hardship for Ameritech.

D. Recommendation Four

¹⁹ Ameritech Exhibit 15.0 at 32.

Q. Please comment on Ms. Johnson's criticisms regarding recommendation four.

A. Ms. Johnson argues that this recommendation represents the "worst of all worlds."²⁰ This is because Ms. Johnson believes that two dockets would need to be litigated to change UNE rates or introduce new UNEs, and that this process would not be subject to a "clock."²¹ I agree that my recommendation would potentially increase the time it takes to effectuate changes in UNE rates. However, I do not see this as an unreasonable result, but rather a result that improves the ability of carriers that rely on these rates to stay competitive and financially viable. As AT&T witness Henson indicates, rate certainty is significant to carriers that rely on UNEs.²² Ms. Johnson does not acknowledge this fact in her testimony.

Q. What negative consequences follow from the current process of approving UNE rates?

A. First, as I mentioned previously, the current process results in widespread rate uncertainty. When tariffs are filed that introduce an element, it has been Ameritech's practice to develop rates for the element using whatever cost model the Company happens to be using at that time. As a result, the investigation into this new service necessarily requires that the underlying cost model also be investigated. The Company can use this

²⁰ Id at 30.

²¹ Id.

²² AT&T Exhibit 3.0 at 7-11.

new model to price its services in the interim. Second, rate confusion occurs as the cost of network functions are sometimes developed using different models, depending on the UNE rate being developed. This can cause the type of discrepancies found in Ameritech's sub-loop UNEs, not to mention a general confusion as to what the appropriate cost model should be for a given element.

Q. Could you provide an example of elements that use different cost models to develop UNEs for the same network functions?

A. Yes. Currently, Ameritech rates are the product of several different cost models, which have nonetheless been used to produce rates for the same network functions, depending on when the tariff was filed. For example UNE loop rates were developed in Docket 96-0486/0569 (Consolidated) using the AFAM cost model; Ameritech used LFAM to develop sub-loop rates, as well as support its rate rebalancing proposal in Docket 98-0252; and the Company is now ready to introduce a new model called Loop Cost Analysis Tool ("LCAT"), the exact application of which is unknown to the Staff. The same is true for switch models— original UNE rates used SCIS, while those under investigation in Docket 00-0700 used ARPSM, and the Company is now ready to introduce a new model called SYCAT. The network itself is not changing; all that is changing is the means by which Ameritech to determines the theoretical costs for network elements.

506 **Q. Please comment on Ms. Smith's criticisms regarding**
507 **recommendation four.**

508 A. Ms. Smith argues that my recommendation is not consistent with the real
509 world, as models and their respective costs are "constantly evolving."²³
510 Ms. Smith further goes on to say that "...rates that were found by the
511 Commission to be TELRIC compliant four years ago or even yesterday
512 may not be TELRIC compliant tomorrow."²⁴ I have a fundamental
513 difference of opinion with Ms. Smith on these assertions. In my opinion,
514 the long run cost of a facility should remain generally constant over time
515 and, since telecommunications is a declining cost industry, should trend
516 downward over time. Further, the models submitted for the calculation of
517 TELRICs should not be so unstable as to need constant revision. These
518 models are either adequate or they are not, and either need fixing or do
519 not. If a model produces a TELRIC compliant result, I see no reason for it
520 to be continually changed.

521
522 As I have discussed previously, and AT&T witness Henson discusses at
523 great length, CLECs need for stability in UNE rate structure is paramount
524 to successful competitive entry.²⁵ Ms. Smith apparently does not share
525 this view, as she endorses the constant fluctuation of TELRIC prices. Ms.
526 Smith's company stands to benefit from keeping UNE rates in flux, as

²³ Ameritech Exhibit 10.1 at 13-14.

²⁴ Id. At 14-15.

²⁵ AT&T Exhibit 3.0 at 7-11.

527 constant fluctuation of UNE rates has the tendency to thwart competition.
528 In my opinion, her testimony should be evaluated with this in mind.

529 **VII. Summary and Conclusion**

530

531 **Q. Could you please summarize your rebuttal testimony?**

532 A. Yes. In this rebuttal testimony, I address several issues. First, three
533 errors found in my direct testimony were addressed. I described the
534 nature of these errors and the changes to my direct testimony that are
535 necessary to fix these errors. None of these errors effect my ultimate
536 conclusions in this case. Second, I discussed the various criticisms of my
537 direct testimony from Ameritech witnesses. I found that these criticisms
538 do not change my position concerning Ameritech's failure to satisfy
539 checklist items 2, 4, 7, and 10. Third, based upon my review of the dark
540 fiber, sub-loop, and CNAM UNE rates, I concluded that an investigation of
541 these rates is needed immediately, and recommend that the Commission
542 order the opening of such an investigation in this proceeding. Fourth, I
543 discussed the various criticisms of the recommendations presented in my
544 direct testimony. I found a criticism of one of my recommendations to be
545 reasonable. As such, I have agreed to modify recommendation three of
546 my direct testimony so that the proposed rate cap on UNEs is limited to
547 five years.

548

549 **Q. Does this conclude your testimony?**

550 A. Yes.